

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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In the Matter of: Virgin Mobile	)	Docket No.
USA, L.P. Petition For Limited	)	10-2521-01
Designation as an Eligible	)	
Telecommunications Carrier	)	Hearing Officer:
	)	David Clark

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TRANSCRIPT OF HEARING PROCEEDINGS

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TAKEN AT: Public Service Commission  
160 East 300 South  
Salt Lake City, Utah

DATE: March 8, 2011

TIME: 9:08 a.m.

REPORTED BY: Kelly L. Wilburn, CSR, RPR

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1 MARCH 8, 2011

9:08 A.M.

2 P R O C E E D I N G S

3 HEARING OFFICER: This is the time and place  
4 for the Hearing In the Matter of Virgin Mobile USA,  
5 L.P. Petition For Limited Designation as an Eligible  
6 Telecommunications Carrier. Docket No. 10-2521-01.

7 My name is David Clark. I've been designated  
8 as the Hearing Officer in this matter. And we'll  
9 begin by taking appearances. And we'll begin with the  
10 Applicant.

11 MS. BERTELSEN: Good morning, your Honor. My  
12 name is Sharon Bertelsen from the law firm of Ballard  
13 Spahr, and I represent Virgin Mobile USA. I have with  
14 me today Elaine Divelbliss, and she will be testifying  
15 for Virgin Mobile.

16 I also have her prefiled testimony. And she  
17 will be available for cross examination. Thank you.

18 HEARING OFFICER: Thank you.

19 MS. SCHMID: Good morning. Patricia E.  
20 Schmid, with the Attorney General's Office,  
21 representing the Division of Public Utilities. And  
22 with me as the Division's witness is Casey J. Coleman.

23 MR. PROCTOR: Paul Proctor on behalf of the  
24 Office of Consumer Services. Ms. Murray is our  
25 witness today.

1 HEARING OFFICER: Thank you.

2 MR. MECHAM: And Steve --

3 MS. MARTINEZ: Sonya Martinez with Salt Lake  
4 Community Action Program.

5 HEARING OFFICER: Thank you Ms. Martinez.

6 MR. MECHAM: Steve Mecham from the law firm  
7 of Callister, Nebeker & McCullough, representing Utah  
8 Rural Telecom Association. And our witness today is  
9 Douglas Meredith.

10 HEARING OFFICER: Thank you. I believe  
11 that's all the parties that I recognize in the room.  
12 I don't believe we have any preliminary matters to  
13 discuss on the record at this time, except for me to  
14 mention that there have been several motions that have  
15 been filed in advance of our hearing today, most  
16 dealing with either discovery or scheduling matters.

17 My impression is that those have all been  
18 addressed, either because they've been withdrawn or  
19 because the Commission's scheduling orders have  
20 addressed them. Is there any position contrary to  
21 that? Does anyone think they have a pending motion or  
22 any other business before we take evidence?

23 MR. PROCTOR: No.

24 HEARING OFFICER: Thank you.

25 MS. BERTELSEN: No, your Honor.

1 HEARING OFFICER: All right. Ms. Bertelsen,  
2 would you call your first witness, please?

3 MS. BERTELSEN: Okay.

4 (Ms. Divelbliss was sworn.)

5 HEARING OFFICER: Thank you.

6 MS. BERTELSEN: May I begin?

7 HEARING OFFICER: Please.

8 ELAINE DIVELBLISS,

9 called as a witness, having been duly sworn,  
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. BERTELSEN:

13 Q. Ms. Divelbliss, please state your name,  
14 title, and business address for the record.

15 A. My name is Elaine, middle initial M.,  
16 Divelbliss. I'm senior counsel for Sprint Nextel  
17 Corporation. And my business address is 10  
18 Independence Boulevard in Warren, New Jersey 07059.

19 Q. Did you previously file testimony with the  
20 Utah Public Service Commission in this docket?

21 A. Yes, I did.

22 MS. BERTELSEN: Might I approach?

23 HEARING OFFICER: Please.

24 Q. (By Ms. Bertelsen) This is the direct, and  
25 rebuttal, and supplemental testimony?

1           A.     Yes, that is correct.

2                   MS. BERTELSEN: I would like these documents  
3 marked for identification as follows: Exhibit 1 is  
4 the Direct Testimony of Elaine Divelbliss, filed on  
5 October 8, 2010, with attachments. Exhibit 2 is her  
6 Rebuttal Testimony, filed on December 7, 2010.

7                   And Exhibit 3 is her Supplemental Testimony,  
8 filed February 10, 2011. This exhibit is marked  
9 "Highly Confidential" because it contains proprietary  
10 information and trade secrets.

11                   And finally there is an Exhibit 3A, which is  
12 the public version of that -- of Exhibit 3 with the  
13 confidential information redacted.

14           Q.     (By Ms. Bertelsen) Ms. Divelbliss, were  
15 these documents -- your direct, rebuttal, and  
16 supplemental testimonies -- prepared by you or under  
17 your immediate supervision?

18           A.     Yes, they were.

19           Q.     And do you have any corrections or additions  
20 to any of these testimonies?

21           A.     I do have several items I can walk through  
22 quickly. And these are really by way of supplement,  
23 based on the passage of time since the original  
24 submission.

25                   In the direct testimony Question 24 describes

1 the availability of a Lifeline application. I'd like  
2 to supplement that testimony to make clear that the  
3 application for customers is now available online to  
4 print and complete.

5 Q. And that's on page 8, line 6?

6 A. Correct.

7 Q. Okay.

8 A. Question 24 of the direct testimony refers to  
9 ETC designation in 11 states. Since the submission of  
10 this testimony Virgin Mobile has been approved in  
11 additional states. Virgin Mobile is now designated as  
12 an ETC in 23 states, and I'd like to provide the list  
13 on the record.

14 In addition to those 11 listed: Indiana,  
15 Mississippi, Washington, Pennsylvania, Alabama,  
16 Connecticut, the District of Columbia, Delaware, New  
17 Hampshire, South Carolina, Iowa, and Arkansas.

18 That response also refers to FCC designations  
19 in four states. The FCC designated an additional five  
20 states on December 29, 2010. And those five  
21 additional states are: Alabama, Connecticut, District  
22 of Columbia, Delaware, and New Hampshire.

23 Q. Are you talking about Question No. 27 and 28?

24 A. Question -- that's, that goes to Question  
25 No. 27 specifically.

1 Q. Okay. Thank you.

2 A. Questions 28 through 31 deal with the  
3 implications of the Company's forbearance order that  
4 was issued prior to the Sprint acquisition in November  
5 of 2009. That forbearance order waived the facility's  
6 requirement for Virgin Mobile when it was, at that  
7 time, a reseller of Sprint service.

8 Again, on November 29th Sprint acquired  
9 Virgin Mobile as a wholly-owned, fully-integrated  
10 subsidiary. Subsequent to the acquisition Virgin  
11 Mobile petitioned the FCC to recognize Virgin Mobile  
12 as a facilities-based carrier.

13 And in fact on December 29, 2010, the FCC did  
14 in fact determine Virgin Mobile to be  
15 facilities-based, in the same order that it designated  
16 Virgin Mobile in those five additional states. And so  
17 that really goes to, you know, questions and responses  
18 to Questions 28 through 31.

19 And I believe that is the extent of the  
20 supplement.

21 Q. With those additions, if I were to ask you  
22 the same questions under oath would you -- would your  
23 responses be the same as in these three testimonies?

24 A. Yes, they would.

25 MS. BERTELSEN: At this time, your Honor, I

1 would like to move the admission into evidence of the  
2 following prefiled testimony: Virgin Mobile  
3 Exhibit 1, the Direct Testimony of Elaine Divelbliss,  
4 Virgin Mobile Exhibit 2, her Rebuttal Testimony,  
5 Virgin Mobile Exhibit 3, her Supplemental Testimony --  
6 and this exhibit marked "Highly Confidential" -- and  
7 Virgin Mobile Exhibit 3A, the public version of her  
8 Supplemental Testimony.

9 HEARING OFFICER: Objections?

10 MS. SCHMID: None.

11 HEARING OFFICER: They'll be received in  
12 evidence. And for the benefit of the other parties,  
13 we'll just continue with the numbering as, you know,  
14 serially, as the Applicant began. And so the next  
15 exhibit would be 4. So these are received in  
16 evidence. Thank you.

17 MS. BERTELSEN: Thank you, your Honor.

18 (Exhibit Nos. 1 through 3A were received.)

19 Q. (By Ms. Bertelsen) Ms. Divelbliss, will you  
20 please provide a summary of your prefiled testimony?

21 A. Yes. Virgin Mobile USA, a subsidiary of  
22 Sprint Nextel Corporation, seeks eligible  
23 telecommunications carrier status solely for the  
24 purpose of providing Lifeline service to low-income  
25 Utah residents under the brand name Assurance

1 Wireless, brought to you by Virgin Mobile.

2 In providing Lifeline service Virgin Mobile  
3 intends to seek low-income support from the Federal  
4 Universal Service Fund. Although Virgin Mobile  
5 contributes to the Utah State Universal Service Fund  
6 it does not seek support from the state USF at this  
7 time.

8 Since March 2009 Virgin Mobile has received  
9 ETC designations in 23 states and launched service in  
10 22 states. Assurance Wireless service has been  
11 exceptionally well received by low-income residents in  
12 these states in which the service is launched,  
13 demonstrating a clear demand for prepaid wireless  
14 Lifeline.

15 Virgin Mobile's Lifeline service launched in  
16 January 2010, offering Lifeline-eligible customers a  
17 free Assurance Wireless branded Kyocera Jax handset of  
18 the same type available to Virgin Mobile non-Lifeline  
19 customers, 200 free minutes of nationwide calling, and  
20 a number of other features and functionalities that  
21 more-affluent customers have come to take for granted.  
22 Such as voicemail access, call waiting, caller ID, and  
23 access to 911 in case of an emergency both at home and  
24 away from home.

25 Nine one one calls and calls to customer care

1 have always been free of charge to all Virgin Mobile  
2 Lifeline customers. Over the past year, in response  
3 to market conditions, the basic Lifeline offer has  
4 been increased to 250 free minutes.

5 Virgin Mobile Lifeline customers may also  
6 choose from two higher-usage offers. For \$5 customers  
7 can receive an additional 250 minutes each month, for  
8 a total of 500 minutes. Or for \$20 customers may  
9 receive an additional 750 minutes each month and a  
10 thousand text messages, for a total of 1,000 voice  
11 minutes and 1,000 text messages.

12 All Lifeline customers may purchase  
13 additional minutes for \$0.10 per minute, and purchase  
14 text messages for \$0.10 per text.

15 Virgin Mobile's Lifeline offerings are well  
16 suited to serve low-income customers with reliable and  
17 affordable service. And we ask the Utah Commission to  
18 rapidly grant approval of Virgin Mobile's petition so  
19 that we may make these offers and the service  
20 available to low-income customers in Utah.

21 Q. When Virgin Mobile establishes an offering in  
22 a state, the FCC sets the standard that it has to be  
23 comparable to what is being offered in the state by  
24 other Lifeline providers. How did Virgin Mobile  
25 determine the offering in Utah?

1           A.     The, the baseline Virgin Mobile considered in  
2     its comparability analysis was unlimited local calling  
3     for Lifeline customers. And that is our  
4     understanding. That many, many ILECs offer that  
5     unlimited local calling plan.

6           We then stacked up against that the services  
7     that we can make available to customers. Specifically  
8     nationwide calling as opposed to restricting customers  
9     to local calling.

10          In addition we looked at the other  
11     functionalities that we provide free of charge,  
12     including voicemail, which many customers now consider  
13     to be, you know, just a fundamental way of  
14     communicating. Call waiting, caller ID.

15          And so we looked at the various elements of  
16     our program and compared them with what a local  
17     unlimited calling plan would offer customers. And we  
18     were able to, you know, get the FCC comfortable with  
19     the notion that this, in fact, was comparable to those  
20     unlimited local plans.

21          Q.     Thank you. And is Virgin Mobile currently  
22     contributing to the State Universal Service Fund?

23          A.     Currently Virgin Mobile -- Virgin Mobile had  
24     been contributing to the state USF. And then there  
25     was a petition for -- that involved overpayment. And

1 so right now Virgin Mobile is taking advantage of  
2 credits that were made available to it.

3 When those credits are exhausted, Virgin  
4 Mobile will continue to contribute to USF.

5 Q. And does Virgin Mobile contribute to the Utah  
6 E-911 fund?

7 A. Yes, it does.

8 Q. Does Virgin Mobile pay into the Federal  
9 Universal Service Fund?

10 A. Yes, it does.

11 Q. And you said that at this time Virgin Mobile  
12 is not seeking to access State Universal Service  
13 Fund funds. Would Virgin Mobile request the  
14 Commission's authority if it were to seek USF funds  
15 for the Lifeline services in the future?

16 A. Yes. If Virgin Mobile sought to, to collect  
17 state USF we would seek the authority to do so.

18 Q. And will you please provide a summary of what  
19 it will take, when and if Virgin Mobile is granted ETC  
20 status in Utah, in terms of launching the service?

21 A. Well, from the Company's perspective we could  
22 be prepared to launch within days of a final order.  
23 There is, you know, there, there is a marketing plan  
24 that's in place. We get up and running, you know,  
25 very quickly in any state where we're designated, you

1 know, so long as the order is final and any --  
2 obviously any conditions have been met.

3 Q. And will Virgin Mobile potential Lifeline  
4 customers be presented with a Utah-specific  
5 information sheet that explains all of the offerings  
6 of Virgin Mobile to allow consumers to make an  
7 informed decision?

8 A. Virgin Mobile tailors, to each state, select  
9 items of its marketing materials. So, for example,  
10 Virgin Mobile launches a direct mail campaign to  
11 targeted zip codes where we would anticipate a number  
12 of low-income customers to be residing.

13 And so in those direct mail pieces that go  
14 out we make very clear exactly what the Utah-specific,  
15 for example, eligibility requirements would be. And  
16 the applications that go to customers obviously  
17 contain -- can contain state-specific eligibility  
18 criteria.

19 And so in that way, yes, customers are made  
20 aware of the Utah-specific requirements.

21 Q. And for the initial application will Virgin  
22 Mobile be using the Commission-provided self-  
23 certification application form, or will Virgin Mobile  
24 be using its own application form that complies with  
25 Administrative Code Rule 746-341-3?

1           A.     The current plan is for Virgin Mobile to use  
2     its own form of application, in compliance with any  
3     Utah requirements.

4           Q.     All right.  And the Commission has held that  
5     the verification of continuing eligibility for each  
6     Applicant must occur as soon as practicable after the  
7     Lifeline Applicant self-certifies and is given  
8     Lifeline service, and verified at least annually.

9                     And that under another process -- that until  
10    another process is identified the Department of  
11    Community and Culture will provide -- perform that  
12    function.  The processes and the cost to be determined  
13    in another docket, the Docket 10-2528-01, or in  
14    another proceeding.

15                    Is Virgin Mobile committed to working with  
16    Utah to establish a system for verifying the  
17    eligibility of Lifeline applicants and implementing  
18    the necessary procedures?

19           A.     Yes.  Yes, it is.

20           Q.     And in your supplemental testimony you  
21    referred to an order by the FCC's Wireline Competition  
22    Bureau, which held that designating Virgin Mobile as a  
23    limited ETC eligible to receive Lifeline support is in  
24    the public interest.  In determining the public  
25    interest what did the FCC consider?

1           A.     The FCC certainly considers competition in  
2     the market. I think it's probably, as most people in  
3     this room are probably aware, Lifeline continues to be  
4     underutilized, you know, by eligible customers.

5           And so the FCC certainly focuses, in its  
6     public interest analysis, on the advent of competition  
7     in the Lifeline market. And what new offerings,  
8     specifically wireless and in this case prepaid  
9     offerings, can bring to customers. And so I think  
10    that that's certainly an important element.

11           The FCC has also considered the impact on the  
12    federal USF, and found the impact to be negligible to  
13    this point of new entrants into the market. Those are  
14    two of the elements that I can think of off the top of  
15    my head.

16           Q.     Okay. And also in that proceeding Virgin  
17    Mobile voluntarily committed to implement procedures  
18    to combat the potential for waste, fraud, and abuse,  
19    and to work with state commissions. Will you please  
20    discuss Virgin Mobile's voluntary commitments in that  
21    area?

22           A.     Absolutely. A significant issue that's been  
23    raised time and time again is the concept of "double  
24    dipping," we'll call it. Frankly, there's been no  
25    real evidence that this is, in fact, a problem.

1           But I believe that, you know, states and the  
2 FCC, and probably fairly, have some concerns that a  
3 customer who may be receiving a Lifeline discount on  
4 their wireline at home could also be availing  
5 themselves of Virgin Mobile's Lifeline service as  
6 well.

7           One measure that we agreed to undertake was  
8 to make available to state commissions our customer  
9 list. And so, to the extent that commissions were in  
10 the position to run Virgin Mobile's customer list up  
11 against an ILEC's list or another competitor's list,  
12 they would be free to do so.

13           That is, in fact, the case in one state in  
14 which we currently operate. It's a very efficient,  
15 low-cost way of addressing the double-dipping problem  
16 without establishing a state database, or a national  
17 database, or something much more costly. So that's  
18 one commitment that we agreed to undertake.

19           We also, you know, our customers undergo a  
20 thorough review process, with the assistance of an  
21 administrator. And that's a review process that would  
22 certainly, you know, continue -- you know, it would be  
23 extended to Utah if we were to be approved here.

24           And I'm trying to recall some of the other  
25 measures.

1 Q. And I'm -- anything with regard to  
2 investigating if an issue comes up?

3 A. Absolutely. If Virgin Mobile becomes aware  
4 of a customer who's receiving Lifeline service from  
5 more than one carrier, certainly we would reach out to  
6 the customer immediately and request that they select  
7 one carrier. And that only that carrier be permitted  
8 to serve that customer and to provide that discount.

9 Q. And then if it is determined that the  
10 customer is not eligible, then what will Virgin Mobile  
11 do as far as deactivating, or?

12 A. Absolutely. So if the customer were to  
13 choose Virgin Mobile, the other carrier would be  
14 obliged to drop the customer. If the cus -- if the  
15 customer chose the carrier other than Virgin Mobile,  
16 Virgin Mobile would immediately cease serving the  
17 customer. And obviously cease collecting the subsidy.

18 Virgin Mobile also agreed to -- voluntarily  
19 agreed to implement a 60-day non-usage policy. And  
20 what that effectively means is if a customer account  
21 goes unutilized over a 60-day period, Virgin Mobile  
22 begins an outreach effort to the customer to determine  
23 whether or not the customer, in fact, continues to  
24 want, continues to want the service.

25 We essentially give the customer a 30-day

1 grace period in which to respond. And respond by  
2 either confirming that they want to continue the  
3 service, or to, or to engage in customer-initiated  
4 usage of the service.

5 If after the 30-day grace period the service  
6 continues to go unutilized or we do not hear from the  
7 customer, the service is deactivated. And Virgin  
8 Mobile seeks to collect the subsidy -- and would not  
9 collect the subsidy for that 30-day grace period.

10 MS. BERTELSEN: Thank you.

11 Your Honor, at this time Ms. Divelbliss is  
12 available for cross examination.

13 HEARING OFFICER: Thank you.

14 Ms. Schmid?

15 MS. SCHMID: All the issues upon which the  
16 Division was going to seek clarification have just  
17 been clarified, so the Division has no cross  
18 examination for this witness.

19 HEARING OFFICER: Thank you. Mr. Proctor?

20 MR. PROCTOR: No questions.

21 HEARING OFFICER: Mr. Mecham?

22 MR. MECHAM: Thank you.

23 CROSS EXAMINATION

24 BY MR. MECHAM:

25 Q. Morning Ms. Divelbliss.

1 A. Good morning.

2 Q. Where does Virgin Mobile currently serve in  
3 rural areas?

4 A. Do you mean in which states does it --

5 Q. No, I'm sorry, in Utah. What rural areas in  
6 Utah does Virgin Mobile serve in, if you know?

7 A. Unfortunately I do not have that information  
8 at my fingertips. I apologize.

9 Q. Okay, thank you. I believe it's Exhibit 2 to  
10 Virgin Mobile's petition in which you enumerate the  
11 exchanges in which Virgin Mobile is seeking to serve.

12 MS. BERTELSEN: I'm sorry, I believe it's in  
13 the original petition.

14 MR. MECHAM: Yeah, that's right.

15 MS. BERTELSEN: Right.

16 THE WITNESS: Exhibit 2. All right, I'm with  
17 you.

18 MS. BERTELSEN: Okay.

19 Q. (By Mr. Mecham) Now, I'm curious on what  
20 basis the Company selected these exchanges.

21 A. Absolutely. Virgin Mobile is effectively  
22 seeking designation within its existing coverage area.  
23 And so the Company lays a coverage map over the wire  
24 centers in Utah and identifies the wire centers in  
25 which coverage is available.

1 Q. Okay. Does that mean that you have  
2 facilities in those exchanges, or that you -- go  
3 ahead, I'm sorry.

4 A. Not necessarily.

5 Q. Okay. And were you granted ETC status you  
6 would be prepared to serve in all of these exchanges  
7 immediately?

8 A. That is correct. There is existing coverage  
9 in all of those wire centers.

10 Q. Okay. Now, Ms. Bertelsen's direct  
11 examination you testified that -- and it's in your  
12 prefiled testimony as well -- that Virgin Mobile pays  
13 the 911 surcharge and also either has paid or will pay  
14 into the state USF, correct?

15 A. That is correct.

16 Q. Does Virgin Mobile also pay the Poison  
17 Control -- pay into the Poison Control Fund that's  
18 basically in tandem with the 911 surcharge?

19 A. No, not currently.

20 Q. And does Virgin Mobile pay the hearing  
21 impaired surcharge?

22 A. Not at this time, no.

23 Q. Okay, thank you. As far as -- now again, in  
24 your prefiled testimony, Question 21, you replied that  
25 Virgin Mobile pays all of the taxes and fees -- all

1 applicable taxes and fees. But that doesn't include  
2 those two funds, I presume, the hearing impaired  
3 surcharge or the Poison Control?

4 A. That is correct. The Company would not view  
5 those as applicable to its prepaid wireless customers.

6 Q. What -- are there any other taxes or fees  
7 that Virgin Mobile pays that are included in that  
8 response?

9 A. Not that I'm aware of sitting here today.

10 Q. And why does the Company take the position  
11 that, for instance, Poison Control doesn't apply and  
12 yet 911 does?

13 A. The Company undertakes a review of a relevant  
14 statute or a relevant regulation. It seeks input from  
15 inside counsel and outside counsel based on its  
16 review. And makes a determination as to whether or  
17 not it would apply to the nature of the service. At  
18 the time -- you know, based on the statute or the  
19 regulation in effect at the time.

20 Q. Okay. Thank you. You also testified this  
21 morning that, with respect to the public interest  
22 test, the FCC looked at competition in the market as  
23 well as the impact on the Federal Universal Service  
24 Fund.

25 Is it the Company's position that that is the

1 full public interest test that's applicable in Utah?

2 A. No. That would definitely be overstating my  
3 testimony.

4 Q. So there are other considerations?

5 A. I would fully expect that there would be  
6 other considerations.

7 Q. Are you aware if the Utah Public Service  
8 Commission has established any such test?

9 A. I know that there is a public interest test  
10 that applies to specifically ETC designation in rural  
11 areas. I, sitting here at this moment, cannot count  
12 all of the factors that might apply.

13 Q. Thank you. I know you're familiar with the  
14 Federal Act and the designation provision 214(e)(2)?

15 A. (Moves head up and down.)

16 Q. That provision makes a distinction between  
17 urban and rural areas, does it not?

18 A. I believe so, yes.

19 Q. Is there -- has Virgin Mobile given any  
20 consideration as to what the differences are in a  
21 rural area versus an urban area?

22 A. The differences, could you clarify what you  
23 mean?

24 Q. I'm sorry, I didn't hear you.

25 A. The differences, could you clarify what you

1 mean by "the differences"?

2 Q. Well, I'm really only using the statute. Do  
3 you have a copy of that in front of you?

4 A. I don't believe so.

5 MS. BERTELSEN: May I approach?

6 HEARING OFFICER: Yes, please.

7 Let the record reflect the witness has been  
8 provided a copy of the statute.

9 (Pause.)

10 Q. (By Mr. Mecham) Have you read it?

11 A. I have, yes.

12 Q. Do you see a distinction between rural and  
13 urban areas in that statute?

14 A. One distinction I see is that in rural areas  
15 the state commission shall find the designation is in  
16 the public interest.

17 Q. Okay.

18 A. Which is what I was referring to.

19 Q. Thank you. And above that it appears that  
20 the statement:

21 "Upon request and consistent with  
22 the public interest, convenience, and  
23 necessity a state commission may, in the  
24 case of an area served by a rural  
25 telephone company, and shall in the case

1 of all other areas, designate more than  
2 one common carrier."

3 Would you agree that there's a distinction  
4 between what one does with the urban areas and the  
5 rural areas in that statute?

6 A. Based on my interpretation, in the case of  
7 urban areas the statute is mandatory in the  
8 designation. And it's discretionary in the case of  
9 rural areas.

10 Q. So there are, perhaps, other considerations  
11 in the rural areas versus the urban areas?

12 A. Yes, I guess -- I would expect that would be  
13 the case.

14 Q. Did Virgin Mobile give any consideration to  
15 what the impact might be on the State Universal  
16 Service Fund were it given ETC status in rural areas?

17 A. In the case of Utah specifically, no.

18 MR. MECHAM: May I have just a moment?

19 HEARING OFFICER: Absolutely.

20 MR. MECHAM: Thank you Ms. Divelbliss, I have  
21 nothing further.

22 HEARING OFFICER: Any redirect,  
23 Ms. Bertelsen?

24 MS. BERTELSEN: Yes.

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REDIRECT EXAMINATION

BY MS. BERTELSEN:

Q. With regard to the public interest finding, would you agree that the FCC and the state commission may conduct public interest analyses differently or may reach a different outcome, depending on the service area?

A. Absolutely.

MS. BERTELSEN: That's it, your Honor. Thank you.

HEARING OFFICER: Thank you.

I have a question or two, Ms. Divelbliss, if I may?

THE WITNESS: Please, your Honor.

HEARING OFFICER: Regarding the Company's prior USF payments or contributions, are you acquainted with the mechanics of the calculation of the amount that is owing under the statute?

THE WITNESS: My understanding is the calculation is based on intrastate revenue, and I believe it's .25 percent.

HEARING OFFICER: Uh-huh. And --

THE WITNESS: It's a very rough understanding.

HEARING OFFICER: Okay. Do you have a sense

1 of how the intrastate revenues are identified for that  
2 purpose by the Company, or? That's really the heart  
3 of my question.

4 THE WITNESS: I do not. That's beyond my  
5 purview.

6 HEARING OFFICER: Uh-huh. I think those are  
7 all my questions.

8 Any redirect based on mine?

9 MS. BERTELSEN: I do have one other question.

10 HEARING OFFICER: That's fair.

11 FURTHER REDIRECT EXAMINATION

12 BY MS. BERTELSEN:

13 Q. And Virgin Mobile has the ability to isolate  
14 intrastate and interstate; is that correct?

15 A. If they don't have a way to isolate it  
16 directly, I suspect -- well, I'm speculating. But  
17 that there is a formula that can be applied to  
18 determine what might be intrastate or interstate.

19 MS. BERTELSEN: Okay, thank you.

20 HEARING OFFICER: You're excused,  
21 Ms. Divelbliss. Thank you.

22 MR. MECHAM: Could I --

23 HEARING OFFICER: Mr. Mecham, did I --

24 MR. MECHAM: Is the -- I'm sorry.

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RE CROSS EXAMINATION

BY MR. MECHAM:

Q. Is there -- is the subsidy or the -- can you divide the subsidy between intrastate and interstate, or does it just come in one whole?

A. The subsidy for the Lifeline customers --

Q. Uh-huh.

A. -- you're speaking of? We do not. It comes in a whole.

MR. MECHAM: Thank you.

HEARING OFFICER: You're excused. Thank you very much.

THE WITNESS: Thank you, your Honor.

HEARING OFFICER: I believe that's your only witness, Ms. Divelbliss, am I correct?

MS. BERTELSEN: That's correct.

HEARING OFFICER: Or I'm sorry, Ms. Bertelsen.

MS. BERTELSEN: Yes, that's correct. Thank you.

HEARING OFFICER: Ms. Schmid?

MS. SCHMID: Thank you. The Division would like to call Mr. Casey J. Coleman as its witness.

HEARING OFFICER: Are there questions for Mr. Coleman before we have him sworn and?

1 MR. PROCTOR: I have none.

2 MR. MECHAM: Again, I don't have extensive  
3 cross, but I'd like to ask him a few questions.

4 HEARING OFFICER: Fine.

5 MR. MECHAM: He might answer it in his  
6 summary, I don't know.

7 HEARING OFFICER: All right.

8 Please have a seat, Mr. Coleman. And raise  
9 your right hand.

10 (Mr. Coleman was sworn.)

11 HEARING OFFICER: Ms. Schmid?

12 CASEY J. COLEMAN,

13 called as a witness, having been duly sworn,  
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. SCHMID:

17 Q. Good morning.

18 A. Good morning.

19 Q. Mr. Coleman, could you please state your full  
20 name, title, and business address for the record?

21 A. Casey J. Coleman, utility technical  
22 consultant. And the address is 160 East 300 South,  
23 Salt Lake City, Utah 84114.

24 Q. Have you been involved in this case on behalf  
25 of the Division?

1 A. Yes.

2 Q. Could you please briefly describe your  
3 activities on behalf of the Division?

4 A. Yeah. I, I reviewed and analyzed the  
5 application submitted by Virgin Mobile, and then filed  
6 some testimony regarding our analysis as a Division on  
7 that testimony filed.

8 Q. In addition have you also reviewed the  
9 testimony filed by others in this Docket?

10 A. Yes.

11 Q. Did you prepare and cause to be filed an  
12 exhibit marked as DPU Exhibit 1, the Direct Testimony  
13 of Casey J. Coleman, which I believe for purposes of  
14 this record we will now call Exhibit 4 --

15 HEARING OFFICER: Thank you.

16 Q. (By Ms. Schmid) Did you prepare and cause  
17 that to be filed?

18 A. Yes.

19 Q. Do you have any changes or corrections to  
20 that testimony?

21 A. No.

22 Q. So if you were asked the same questions today  
23 while you are under oath would your answers be the  
24 same as those stated in the prefiled written  
25 testimony?

1 A. Yes.

2 Q. Do you have a summary to give today?

3 A. Yes.

4 Q. Please proceed.

5 A. My testimony focused on the application filed  
6 by Virgin Mobile, and whether its petition to become  
7 an eligible telecommunications carrier met the  
8 requirements outlined by the Federal Communications  
9 Commission.

10 My analysis looked at the federal framework  
11 to determine whether granting an ETC designation to  
12 Virgin Mobile was in the public interest. And  
13 finally, my testimony covered the conditions the  
14 Commission should adopt if Virgin Mobile is designated  
15 as an ETC in the State of Utah.

16 My analysis showed that Virgin Mobile has met  
17 the federal requirements that would allow it to  
18 qualify for the Lifeline subsidy.

19 Even though Virgin Mobile has met the  
20 guidelines suggested by the FCC as an ETC, the  
21 Division believed that approval of Virgin Mobile's  
22 application should be conditioned upon requiring it to  
23 follow similar verification methods used by other  
24 Lifeline providers within the State in order to ensure  
25 that individuals qualify for the Lifeline subsidy.

1           And then we also believe another condition --  
2           and I know that Ms. Divelbliss brought this up as  
3           well. But if Virgin Mobile had a desire to seek funds  
4           from the state USF Fund that they do need to reapply  
5           for that also as well.

6           And so we believe the Commission should put  
7           that as, you know, an element in their -- I know they  
8           stated it, but it's just as a good measure to make  
9           sure that it's expressed in there as well that that is  
10          a requirement. And that's my summary.

11          MS. SCHMID: Before the Division makes  
12          Mr. Coleman available for cross examination and  
13          questions from the Hearing Officer, the Division would  
14          like to move the admission of Exhibit 4, the Direct  
15          Testimony of Casey J. Coleman, in this docket.

16          HEARING OFFICER: If there's no objection,  
17          the exhibit will be received in evidence.

18          MS. SCHMID: Thank you.

19                 (Exhibit No. 4 was received.)

20          MS. SCHMID: Mr. Coleman is now available.

21          HEARING OFFICER: Anyone have any cross  
22          examination for Mr. Coleman?

23                 Do you --

24          MS. BERTELSEN: Yes.

25          HEARING OFFICER: -- Ms. Bertelsen? Let's

1 have you start then.

2 MS. BERTELSEN: Yes, thank you.

3 CROSS EXAMINATION

4 BY MS. BERTELSEN:

5 Q. Good morning.

6 A. Good morning.

7 Q. And Virgin Mobile agrees with your testimony,  
8 thank you. We just have one question, and that is,  
9 you stated that Virgin Mobile -- you determined that  
10 Virgin Mobile meets all of the requirements for ETC  
11 designation, correct?

12 A. As far as what the federal guidelines were,  
13 yeah. And what we reviewed looking at, you know,  
14 making sure that it had all the functions and the  
15 things that are outlined, yes.

16 Q. That's what I was gonna ask. That Virgin  
17 Mobile will offer all of the services and  
18 functionalities supported by the Universal Service  
19 Program using their own facilities or a combination of  
20 their own and another carrier's services, correct?

21 A. Correct, yes.

22 Q. And then also that it will -- it has  
23 committed that it will advertise the availability and  
24 rates of the Lifeline services using media of general  
25 distribution?

1 A. Correct, yes.

2 MS. BERTELSEN: Thank you.

3 HEARING OFFICER: Mr. Mecham?

4 MR. MECHAM: Thank you.

5 CROSS EXAMINATION

6 BY MR. MECHAM:

7 Q. Good morning Mr. Coleman.

8 A. Good morning Mr. Mecham.

9 Q. You testify in your prefiled testimony -- and  
10 you just did in your, in your verbal testimony -- that  
11 Virgin Mobile meets all the criteria to be designated  
12 an ETC. And you specified that that's under Section  
13 214(e)(1) of the federal statute.

14 Do they meet the public interest criteria of  
15 (e)(2)?

16 A. I don't have (e)(2) in front of me, so I  
17 couldn't specifically say. And I don't believe I put  
18 it in my testimony. Maybe I did and I missed it, but.

19 MS. BERTELSEN: May I approach?

20 HEARING OFFICER: Please.

21 The witness is being provided a copy of the  
22 statute.

23 MS. BERTELSEN: Two fourteen (e)(1) and (2.)

24 MS. SCHMID: Thank you very much,

25 Ms. Bertelsen.

1 MR. MECHAM: Yeah.

2 (Pause.)

3 THE WITNESS: Okay. I, I read it. Do you  
4 want to ask me the question again so I can respond?

5 Q. (By Mr. Mecham) Yes, thank you. Do they  
6 meet the public interest test? And what is the  
7 public -- well, no. I won't compound it.

8 Do they meet the public interest test?

9 A. It does appear, from my reading of this --  
10 and again, I'm not an attorney. So it's just my  
11 understanding is --

12 Q. Well, I'm not asking for your legal opinion.

13 A. Okay, good.

14 Q. I just know you have lots of experience.

15 A. It does look like there could be a different  
16 test for a rural area versus an urban area. Now, I do  
17 know that in the State of Utah that there is some  
18 public interest that has happened for, not necessarily  
19 ETC designations, but in other areas where I believe  
20 the Commission has gone forward and put forth a public  
21 interest standard that would be applicable for rural  
22 carriers.

23 What I'm not sure of with this, though, is I  
24 believe that the Company has to come in and -- I know  
25 in other cases that for it to be in the rural area

1 they would have to request a waiver of this, or ask  
2 for it to be in the rural areas. And I don't know if  
3 that's applicable with the ETC designation or not.

4 Q. So the test -- has a test been established as  
5 to what public interest is in the rural areas?

6 A. I don't know specifically for an ETC. I  
7 don't, I don't know that it has been. I believe that  
8 there is in other similar cases. For example CPCNs  
9 and other areas, I believe that there is a public  
10 interest standard out there for the rural areas.  
11 Well, hold on. Let me think about this.

12 Yeah. Actually, going back in my memory, I  
13 believe that there was an ETC case that was dealing  
14 with the rural area and Western Wireless, which I  
15 believe was an ETC case. And I believe that there was  
16 a rural standard that was somewhat applicable in that  
17 case.

18 Q. Do you remember what happened in the Western  
19 Wireless case?

20 A. From my understanding, I believe that the  
21 Commission determined that Western Wireless was not in  
22 the public interest at that time. I don't know the  
23 exact language, but I believe it was that they felt  
24 that there wasn't a benefit to having multiple  
25 carriers within one area.

1           And that's going off the top of my head and  
2 not reviewing it recently, so my verbiage could be a  
3 little bit incorrect.

4           Q.    Okay, thank you. Did the Division give any  
5 consideration to what the impact might be of ETC  
6 status in rural areas specifically?

7           A.    Obviously there was some consideration given  
8 in the rural areas as far as competition. You know,  
9 having wireless providers go in there's gonna be  
10 competition that happens with that. And there  
11 obviously could be an impact to that.

12                   Did we do a thorough analysis as far as if  
13 there would be financial impacts, you know, a dollar  
14 amount that would be tied to that? We didn't do  
15 anything specific to that.

16                   But there was discussions and at least a  
17 review, you know. Recognizing that if these -- sorry.  
18 If Virgin Mobile or if other prepaid wireless was able  
19 to go into rural areas, obviously there would be an  
20 impact.

21                   But I don't have a dollar amount that I could  
22 say it would be that impact.

23                   MR. MECHAM: Can I have just one moment?

24                   HEARING OFFICER: Yes.

25   (Pause.)

1 MR. MECHAM: Thank you.

2 Q. (By Mr. Mecham) Mr. Coleman, do you know if  
3 the -- I'm gonna -- do you have (e)(5) -- yeah, with  
4 you? Did Ms. Bertelsen give that to you?

5 A. It starts: "Service area defined"?

6 Q. Yes, that's correct.

7 A. Yes, I do have that.

8 Q. Do you know if the State has made any  
9 determination that a service area for an ETC should be  
10 different than the underlying carrier's study area?

11 A. Off the top of my head, I don't, I don't  
12 remember if there has been that distinction made.

13 Q. As far as you know, there hasn't, has there?

14 A. Again, I -- honestly, I don't, I don't  
15 remember. So I, I can't say yes or no.

16 MR. MECHAM: Thank you, Mr. Coleman.

17 Thank you, your Honor.

18 HEARING OFFICER: Redirect?

19 MS. SCHMID: Just a couple of questions.

20 Actually, no redirect. Thank you.

21 HEARING OFFICER: Mr. Coleman, you're  
22 excused.

23 THE WITNESS: Thank you.

24 HEARING OFFICER: Thank you very much.

25 Mr. Proctor, let's determine whether we have

1 cross for Ms. Murray.

2 MR. MECHAM: I'll always have a little cross.

3 MR. PROCTOR: Do you want to take your break  
4 now, and then just do her all at once?

5 HEARING OFFICER: That's a great idea. If  
6 that's convenient for you, let's do that. Let's meet  
7 back at five after the hour.

8 (A recess was taken from 9:55 to 10:05 a.m.)

9 HEARING OFFICER: Let the record reflect that  
10 Ms. Cheryl Murray has taken the stand for the Office  
11 of Consumer Services.

12 (Ms. Murray was sworn.)

13 HEARING OFFICER: Mr. Proctor?

14 CHERYL MURRAY,

15 called as a witness, having been duly sworn,  
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. PROCTOR:

19 Q. Ms. Murray, you're here on behalf of the Utah  
20 Office of Consumer Services; is that correct?

21 A. Yes.

22 Q. And for the Office you are a utility analyst,  
23 in particular assigned to this matter?

24 A. That's correct.

25 Q. And have you filed two items of testimony,

1 the first that is on its face marked OCS-1D, which is  
2 your Direct Testimony, filed November 23, 2010?

3 A. Yes.

4 Q. And there's an exhibit also marked OCS-1.1,  
5 Updates to Lifeline Offering; is that correct?

6 A. Yes.

7 Q. And finally there is an item list -- marked  
8 on its face as OCS-1R Murray, your Response to  
9 Supplemental Testimony. And that was filed  
10 February 24, 2011?

11 A. Correct.

12 Q. Do you have any corrections that you wish to  
13 make to either of those items of testimony?

14 A. Yes, I do. To the one marked 1R? In the  
15 heading I have a typographical error, Ms. Divelbliss's  
16 name is spelled incorrectly. It should be  
17 D-i-v-e-l-b-l-i-s-s.

18 Q. And that is the only correction?

19 A. That is, yes.

20 Q. If I were to ask you the questions that you  
21 responded to in your prefiled written testimony would  
22 your answers remain the same?

23 A. They would.

24 MR. PROCTOR: Your Honor, I believe that  
25 under your system of marking it would be Exhibit 5,

1 with -- I would request that the exhibit be marked  
2 5.1. And Exhibit 6 is the response testimony. And  
3 with that, we would move for their admission.

4 HEARING OFFICER: Thank you, Mr. Proctor. I  
5 just want to make sure that I've got 5.1. Would you  
6 describe that again for me?

7 MR. PROCTOR: Ms. Murray?

8 HEARING OFFICER: Is that an attachment?

9 THE WITNESS: It's an attachment to the  
10 direct testimony.

11 HEARING OFFICER: Okay. You don't happen to  
12 have an extra copy of that, would you? I apologize,  
13 but I, I think I may not have.

14 THE WITNESS: (The witness complies.)

15 HEARING OFFICER: Thank you.

16 THE WITNESS: You're welcome.

17 HEARING OFFICER: I see that. I do have it,  
18 I apologize. I'm gonna give you yours back. Thank  
19 you.

20 THE WITNESS: Thank you.

21 HEARING OFFICER: Mr. Proctor, please  
22 proceed.

23 Q. (By Mr. Proctor) Ms. Murray, would you  
24 provide a summary of your testimony, please?

25 A. Yes. The Office of Consumer Services is

1 responsible for assessing the impact of utility rate  
2 changes and regulatory actions upon residential and  
3 small commercial customers. It is in that capacity  
4 that we analyzed Virgin Mobile's request for a limited  
5 designation as an eligible telecommunications carrier.

6 Our concerns are both with the benefits  
7 provided to low-income carriers through -- customers  
8 through prepaid wireless ETCs, and the funds that are  
9 collected from telecommunications customers to fund  
10 ETCs.

11 The Office recognizes the need for low-income  
12 persons to have access to telephone service, and in  
13 general supports the ability to receive that access  
14 through prepaid wireless telephone service.

15 Based on our analysis of Virgin Mobile's  
16 testimony, exhibits, and data responses, the Office  
17 recommends that the Commission approve Virgin Mobile's  
18 request for ETC designation and allow them to begin  
19 providing Lifeline service to eligible customers with  
20 the following three conditions:

21 One, development and use of a Utah-specific  
22 information sheet. Ms. Divelbliss this morning has  
23 suggested that they do create something of that  
24 nature. We haven't seen it, and so we can't really  
25 comment on the content.

1           But we do recommend that interested parties  
2 be able to work with Virgin Mobile or to review that  
3 sheet so that we can find if it has the same types of  
4 information that the TracFone case -- TracFone agreed  
5 to provide in their Docket.

6           Number two, payment of appropriate taxes and  
7 fees.

8           Three, use of an interim certification and  
9 verification process, and agreement to adopt any  
10 changes to the process developed within Docket  
11 10-2528-01.

12           This interim process I described in my  
13 responsive testimony. And it would add the additional  
14 protection of requiring Lifeline applicants certifying  
15 through program-based eligibility to provide Virgin  
16 Mobile documentation regarding their participation in  
17 qualifying public assistance programs.

18           The Commission's order in this Docket should  
19 make clear that Virgin Mobile will be subject to the  
20 requirements and/or rules resulting from Docket  
21 10-2528-01, which we believe will address some of  
22 these issues.

23           The Office also recommends that the  
24 Commission undertake the tasks of Docket 10-2528-01 at  
25 its earliest convenience.

1           And finally, the Office recommends that the  
2 Commission should require that Virgin Mobile notify  
3 the Commission of any changes to its Lifeline service  
4 offering. And that any future request for access to  
5 the state USF requires a filing and a hearing on the  
6 matter.

7           And Ms. Divelbliss has already stated earlier  
8 today that they would request that certification, or  
9 come to the Commission if they were to ask for state  
10 USF funding. And that concludes my summary.

11          Q.    Ms. Murray, with respect to the interim  
12 process that you referred to, has Virgin Mobile  
13 offered an interim process also for verification of  
14 eligibility as well as certifying initial eligibility?

15          A.    Yes, they have.

16          Q.    And what is that offer from Virgin Mobile?

17          A.    They will -- well, they will -- the customer  
18 will provide -- they'll fill out the application.  
19 They will self-certify that they are eligible either  
20 under a program-based qualification or income based.

21                If it is income based, then they provide  
22 documentation of their income level. And our concern  
23 is if it is program based -- currently DCC checks all  
24 of the applicants to make sure that they are enrolled  
25 in a program. But once we get prepaid wireless

1 providing ETC service, currently DCC is not set up.  
2 And it's our understanding that they are not really  
3 willing, able, whatever, to undertake that at this  
4 time.

5 And so until there is a, a new process in  
6 place, which we think will come out of Docket  
7 10-2528-01, we're recommending that program-based  
8 applicants document their eligibility.

9 Q. And would that process on an interim basis  
10 for verification satisfy the Office?

11 A. It would. And we -- I would just add that we  
12 think that -- we don't expect that this would just  
13 apply to Virgin Mobile. We think this is something  
14 that needs to be in place for all prepaid wireless  
15 carriers until there is another process in place.

16 MR. PROCTOR: Ms. Murray is available for  
17 cross. Thank you.

18 HEARING OFFICER: Thank you Mr. Proctor.

19 MS. BERTELSEN: Yes.

20 HEARING OFFICER: Ms. Bertelsen?

21 MS. BERTELSEN: Thank you, your Honor.

22 CROSS EXAMINATION

23 BY MS. BERTELSEN:

24 Q. To continue that line of questioning, you're  
25 recommending that applicants under the program-based

1 eligibility provide -- not only self-certify, but then  
2 provide documentation of the program --

3 A. Correct.

4 Q. -- is that correct?

5 A. Correct.

6 Q. And are you familiar with Administrative Code  
7 746-341-3, subsection (a), addresses the program-based  
8 eligibility? And that states: The ETC shall provide  
9 Lifeline telephone service to any Applicant who  
10 self-certifies under penalty of perjury this  
11 household -- or his household is eligible for public  
12 assistance under one of those 11 programs listed.

13 Are you aware that the Office is requesting a  
14 requirement that is beyond this rule?

15 A. I am aware that -- of what the rule says.

16 Q. Uh-huh.

17 A. I'm also aware that the Commission has  
18 assign -- or contracted with DCC to provide certain  
19 verification requirements. And that works fine as --  
20 for the ETCs that are currently in place.

21 But as we add more, and they are not going  
22 through DCC for that verification, we're asking for an  
23 additional protection. To make sure that the people  
24 who are signing up for this program are, in fact,  
25 eligible.

1 Q. Okay. And just to add one other thing. In  
2 the TracFone December 1, 2010, report and order the  
3 Commission -- and I think -- and I'm gonna ask if  
4 you're aware of this. The Commission stated that  
5 qualified applicants for Lifeline service may receive  
6 such service initially based on their own self-  
7 certification as outlined in that Rule 746-341-3.

8 A. I'm --

9 Q. So you're aware of that order?

10 A. I'm aware of that order.

11 Q. Okay.

12 A. I'm also aware that it is under  
13 reconsideration.

14 Q. Okay. Thank you. And may we visit your  
15 direct testimony for a moment --

16 A. Okay.

17 Q. -- please? On page 2, line 31, you state  
18 that Virgin Mobile -- your -- the Office is  
19 recommending that the Commission condition any order  
20 granting Virgin Mobile ETC status that:

21 "Virgin Mobile must comply with  
22 Commission determined methods or  
23 processes to establish initial  
24 eligibility, to complete annual  
25 recertification and to determine that

1 customer -- customers do not take  
2 service from multiple Lifeline  
3 providers."

4 And that would include payment of these  
5 associated processes. And my question is, are you  
6 aware that the Division of Public Utilities believes  
7 that treating Virgin Mobile the same as other  
8 companies, like Qwest or rural ILECs, that pay into  
9 the Universal Service Fund is sufficient to cover the  
10 cost of verification?

11 A. I'm aware that that is their view. I would,  
12 however, say that we don't know what the cost of  
13 verification is going to be, because there isn't a  
14 process currently in place to verify all of the  
15 potential wireless providers -- prepaid wireless  
16 providers, landline providers.

17 Until that process is actually developed and  
18 in place, which we assume will happen through  
19 10-2528-01, that's when we will know what the cost is.

20 Q. Okay, thank you. And then on that same  
21 page 2 but line 36 you state that Virgin Mobile -- and  
22 this is also in your recommendation -- or the Office's  
23 recommendation. That:

24 "Virgin Mobile must be subject to  
25 state taxes and fees related to

1 telecommunications services necessary to  
2 the public safety and welfare."

3 What are you referring to there?

4 A. USF, 911, Poison Control, E-911, those types  
5 of taxes and fees.

6 Q. Okay. And are you also aware that in the  
7 TracFone proceeding the Commission declined to make  
8 the payment of 911 tax and other public interest  
9 program surcharges a condition to the ETC designation?

10 A. I'm aware of that order, and aware that it is  
11 under reconsideration.

12 Q. And the reconsideration, I have it. I  
13 believe it's limited to whether they should contribute  
14 to the Universal Service -- the State Universal  
15 Service Fund.

16 A. You very well may be correct.

17 Q. Okay. That's --

18 A. I know they aren't -- at least I don't  
19 believe they are revisiting -- revisiting everything in  
20 that order.

21 HEARING OFFICER: I can assure you the  
22 Commission knows what it's revisiting.

23 MS. BERTELSEN: Thank you. That's all I  
24 have. Thank you, your Honor.

25 HEARING OFFICER: Thank you Ms. Bertelsen.

1 MS. BERTELSEN: Thank you Ms. Murray.

2 HEARING OFFICER: Mr. Mecham?

3 MR. MECHAM: Thank you.

4 CROSS EXAMINATION

5 BY MR. MECHAM:

6 Q. Good morning Ms. Murray.

7 A. Good morning.

8 Q. Does the Office view this program being  
9 offered by Virgin Mobile as being comparable to what's  
10 offered by a landline?

11 A. I think we view it as being -- we -- I don't  
12 know that we have analyzed this in a direct  
13 comparability. We do think that there are  
14 differences. As was pointed out earlier, with a  
15 landline you often get -- well, generally you would  
16 get unlimited local calling.

17 So to make a direct comparison I think would  
18 be difficult. And we have not -- we're not viewing  
19 this as in a direct comparison.

20 Q. So you haven't determined it's inferior?

21 A. No, we have not.

22 Q. Okay. Just thought I'd ask. In your direct  
23 testimony, lines 13 to 23, you itemize several things  
24 that the Office felt needed to be done before the  
25 Commission could grant ETC designation.

1 A. Correct.

2 Q. Have all of those been done?

3 A. They have not all been done. But in my  
4 responsive testimony we've sort of altered our  
5 position somewhat. And the reason for that is that we  
6 think that prepaid wireless can provide a valuable  
7 service to low-income customers.

8 We think that there is a docket that's open  
9 that will address many of these issues that we have.  
10 We think that the docket hasn't proceeded as quickly  
11 as we anticipated. And so what we've tried to do is  
12 come up with something that will satisfy the majority  
13 of our concerns on an interim basis.

14 Q. And what if at the end of that interim period  
15 these haven't been -- these conditions that you stated  
16 haven't been met?

17 MR. PROCTOR: Objection, calls for  
18 speculation.

19 HEARING OFFICER: Sustained.

20 MR. MECHAM: Well -- okay.

21 Q. (By Mr. Mecham) With respect to your  
22 requirement that they pay -- that is, Virgin Mobile  
23 pay all taxes and fees? Does that mean if they're not  
24 paying Poison Control, even in your rebuttal  
25 testimony, they shouldn't be granted ETC status?

1           A.    We think that they should be required to pay  
2    Poison Control.

3           Q.    And the hearing impaired surcharge?

4           A.    To be honest, we have not really looked at  
5    that particular.  But it is, it is a service that's  
6    related to telecommunications but we haven't  
7    specifically looked at that one, so.

8           Q.    Does that have the same principles as the  
9    911?  I mean in other words, if they don't pay the  
10   hearing impaired surcharge doesn't that result in a  
11   diminishment of the funds to be able to fulfill the  
12   requirements of that program?

13          A.    Potentially, yes.

14          Q.    Okay.  Did the Office consider the public  
15   interest impact in rural areas of this ETC  
16   application?

17          A.    Not specifically.  I mean not -- it -- maybe  
18   you would like to expound on that question just a bit.

19          Q.    Well, as you've -- you've been present in the  
20   hearing room this morning?

21          A.    Uh-huh.

22          Q.    Do you have a copy of Section 214(e)(2) of  
23   the Federal Act?

24          A.    I do not.

25                MR. PROCTOR:  No.

1 MR. MECHAM: I guess I'll -- may I approach,  
2 your Honor?

3 HEARING OFFICER: Please.

4 The witness has been provided a copy of the  
5 Act. The relevant section.

6 THE WITNESS: Okay.

7 Q. (By Mr. Mecham) It requires, does it not,  
8 that the Commission determine that in rural areas it  
9 be in the public interest to designate another ETC?

10 A. That's correct. And I'm sure the Commission  
11 can make that determination.

12 Q. Do you know what the standard is?

13 A. I do not.

14 Q. Do you have any -- okay.

15 What about the service area? The service  
16 area is defined in 214(e)(5.)

17 MR. PROCTOR: Objection, there's no question.  
18 It's merely a statement. Furthermore, there's no  
19 foun --

20 MR. MECHAM: Well, I'm having her read it.

21 MR. PROCTOR: There's no foundation for --

22 MR. MECHAM: Well, there's no --

23 MR. PROCTOR: There's no foundation within  
24 her direct testimony with respect to service  
25 territories in rural areas and the public interest.

1           And she only -- she already testified that  
2 they didn't speci -- the Office did not specifically  
3 consider that issue in its testimony, so there's no  
4 foundation for any questions pertaining to it.

5           HEARING OFFICER: Mr. Mecham, I'll allow you  
6 to ask another question or two to see if you can  
7 develop a foundation that the information you're  
8 seeking is within the witness's understanding or  
9 knowledge.

10           MR. MECHAM: Well, your Honor, I don't want  
11 to get into a big argument over foundation, but the  
12 Rules of Evidence in administrative law do not apply.  
13 So I don't really have to establish foundation, in  
14 spite of Mr. Proctor's best efforts.

15           But nevertheless, I'm just curious if  
16 Ms. Murray is aware of the Commission having  
17 established that the service area could be something  
18 other than the study area. If the answer is no, the  
19 answer is no.

20           HEARING OFFICER: You can answer that  
21 question, Ms. Murray.

22           THE WITNESS: Okay. I, I -- my understanding  
23 was that the Commission can designate a service area.  
24 I don't know the study. I don't know anything about  
25 the study area.

1 MR. MECHAM: Okay, all right. Thank you.

2 Thank you. That's all.

3 HEARING OFFICER: Redirect, Mr. Proctor?

4 MR. PROCTOR: Just a few.

5 REDIRECT EXAMINATION

6 BY MR. PROCTOR:

7 Q. Ms. Murray, are you familiar with pending  
8 legislation that would assess 911, E-911, and Poison  
9 Control fees upon prepaid wireless services?

10 A. Yes.

11 Q. Do you know the status of that legislation at  
12 this time?

13 A. I believe it's still being voted on. I --  
14 last I heard, so.

15 Q. With respect to the relay fees that are  
16 assessed, do you know whether or not the relay service  
17 for the hearing impaired functions on a wireless  
18 handset?

19 A. I do not know.

20 MR. PROCTOR: That's all I have, thank you.

21 HEARING OFFICER: Thank you Mr. Proctor.

22 Thank you Ms. Murray.

23 THE WITNESS: You're welcome.

24 HEARING OFFICER: You're excused.

25 Ms. Martinez, I believe you would be next.

1 MR. PROCTOR: And with your permission, your  
2 Honor, I will ask her the preliminary questions.

3 HEARING OFFICER: Thank you very much for  
4 your assistance, Mr. Proctor. I just want to make  
5 sure that we're -- that the process is necessary.

6 Mr. Mecham, do you have some cross for  
7 Ms. Martinez as well? Few questions?

8 MR. MECHAM: I could.

9 HEARING OFFICER: Okay.

10 (Ms. Martinez was sworn.)

11 HEARING OFFICER: Thank you.

12 Mr. Proctor?

13 MR. PROCTOR: Thank you.

14 SONYA MARTINEZ,

15 called as a witness, having been duly sworn,  
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. PROCTOR:

19 Q. Ms. Martinez, would you state your name, your  
20 business address, and by whom you're employed?

21 A. Sonya Martinez, S-o-n-y-a, M-a-r-t-i-n-e-z.  
22 I am employed by Salt Lake Community Action, 764 South  
23 200 West, Salt Lake City, Utah.

24 Q. In what capacity are you employed by Salt  
25 Lake CAP?

1           A.    I am an advocate for the low-income  
2 population.

3           Q.    And as part of your responsibility do you  
4 review, analyze, and provide testimony in matters such  
5 as the one that's before this Commission today?

6           A.    Yes.

7           Q.    And in this case did you prepare and file  
8 testimony addressing the issues raised by Virgin  
9 Mobile's application?

10          A.    Yes, I did.

11          Q.    What was that testimony and when was it  
12 filed?

13          A.    It was filed on November 23, 2010.  Testimony  
14 of Sonya L. Martinez on behalf of Salt Lake Community  
15 Action Program.

16          Q.    Did you file any other testimony?

17          A.    No.

18          Q.    If I -- do you have any changes or  
19 corrections that you wish to make to that direct  
20 testimony?

21          A.    No, I do not.

22          Q.    If I were to ask you the questions that you  
23 responded to in the written testimony would your  
24 answers remain the same?

25          A.    Yes.

1 MR. PROCTOR: I believe this would be  
2 marked --

3 HEARING OFFICER: It's Exhibit 7.

4 MR. PROCTOR: -- Exhibit 7?

5 HEARING OFFICER: Correct.

6 MR. PROCTOR: And with that I would, on  
7 behalf of Ms. Martinez and Salt Lake CAP, move their  
8 admission.

9 HEARING OFFICER: Exhibit 7 will be received  
10 in evidence.

11 THE WITNESS: Thank you.

12 (Exhibit No. 7 was received.)

13 Q. (By Mr. Proctor) Ms. Martinez, do you have a  
14 summary of your testimony you'd like to give?

15 A. Yes. Salt Lake Community Action is a  
16 community-based nonprofit organization that assists  
17 low-income households in becoming self-sufficient  
18 through the provision of direct services and advocacy.

19 Lifeline is a critical resource to provide  
20 low-income households with access to affordable  
21 quality telephone service. Salt Lake Community Action  
22 recognizes the value of wireless service to the  
23 low-income population, and believes it would be  
24 advantageous to expand Lifeline access to quality  
25 affordable wireless service.

1           Additionally, we recognize the importance of  
2 competition in the Lifeline prepaid wireless market to  
3 ensure low-income customers have access to a range of  
4 telecommunications services. We also believe it is  
5 important to maintain the integrity of the Lifeline  
6 program.

7           Considering the Lifeline prepaid wireless  
8 market is new territory and we are faced with  
9 comparing services that are fundamentally different,  
10 we would prefer that the Commission first address the  
11 issue of what it considers to be a minimum appropriate  
12 Lifeline service.

13           In our testimony we address the issues we are  
14 fundamentally concerned with in this application,  
15 including the limited offer and our concern it could  
16 potentially lead to diminished quality of service.  
17 That communications from the Company to customers  
18 provide clear, fact-based information about the  
19 products and nature of offers.

20           And lastly, that the Company comply with the  
21 verification and eligibility process in Utah and pay  
22 their fair share for that process.

23           HEARING OFFICER: Thank you --

24           Q. (By Mr. Proctor) Does that conclude your  
25 summary?

1 A. Yes.

2 MR. PROCTOR: Ms. Martinez is available for  
3 cross. I apologize.

4 HEARING OFFICER: No, that's quite all right,  
5 Mr. Proctor. Thank you very much for your assistance.

6 And Ms. Bertelsen, do you have cross  
7 examination?

8 MS. BERTELSEN: Yes, I do. Thank you.

9 CROSS EXAMINATION

10 BY MS. BERTELSEN:

11 Q. With regards to communications or advertising  
12 provided by Virgin Mobile, have you reviewed Virgin  
13 Mobile's Lifeline advertising materials?

14 A. Yes, we have.

15 Q. And do all of the ETCs provide the one-page  
16 fact sheet or information sheet?

17 A. Not that I'm aware of, with the exception of  
18 TracFone.

19 Q. Uh-huh. And are you aware of a reason why it  
20 is required for the prepaid wireless Lifeline and not  
21 for the landline?

22 A. Well, because of the nature of the offers.  
23 They get -- in our opinion they get very difficult --  
24 they're very difficult to understand.

25 And customers, especially in a situation

1 where they may be switching from a landline to a, you  
2 know, to a wireless option, they -- we just want to  
3 make sure that they're completely informed of what  
4 they could potentially be giving up.

5 In addition to anything that they may be, you  
6 know, additional features they may be receiving that  
7 they don't already have.

8 Q. To make an informed decision?

9 A. Yes, to make an informed decision.

10 MS. BERTELSEN: Will you hold on a minute,  
11 please?

12 THE WITNESS: Yes.

13 Q. (By Ms. Bertelsen) Can you please tell me  
14 which of the Virgin Mobile materials -- the  
15 advertising materials that you have reviewed?

16 A. I don't know off the top of my head. Let me  
17 see if I have them here. When we had our  
18 conference --

19 Q. Uh-huh.

20 A. -- the information that was provided at that  
21 conference, those are all of the documents --

22 Q. Oh, okay.

23 A. -- that I looked at. I believe it's this --  
24 sorry. I don't have them in front of me.

25 Q. Okay.

1 MS. BERTELSEN: Thank you.

2 HEARING OFFICER: Does that conclude your  
3 questions?

4 MS. BERTELSEN: Yes. Thank you, your Honor.

5 HEARING OFFICER: Okay, thank you.

6 Mr. Mecham?

7 MS. BERTELSEN: Thank you Ms. Martinez.

8 MR. MECHAM: Thank you.

9 CROSS EXAMINATION

10 BY MR. MECHAM:

11 Q. Ms. Martinez, did I understand you to say  
12 that 250 minutes may not be adequate?

13 A. Yes.

14 Q. So does that mean that you're not advocating  
15 this particular program?

16 A. Correct. Our position is that we, we don't  
17 think this particular issue has been addressed the way  
18 that it should -- that we feel it should have been at  
19 both the FCC as well as the Commission level. Which  
20 is that there hasn't been a real analysis of whether  
21 or not it is comparable to unlimited.

22 And that's because we're looking at people  
23 who are in places where they are truly, you know,  
24 they're base -- they're trying to get their basic  
25 needs met. Whether that be calling Workforce

1 Services, Unemployment, other agencies to get basic  
2 services met.

3 We're fearful that people -- because the  
4 enticement -- the entice -- the enticing appeal of  
5 some of these prepaid offers may lead to a diminished  
6 quality of service for some, some households.

7 Q. Okay.

8 MR. MECHAM: Thank you.

9 HEARING OFFICER: Does that conclude your  
10 examination, Mr. Mecham?

11 MR. MECHAM: It does.

12 HEARING OFFICER: Thank you very much.

13 Mr. Proctor?

14 MR. PROCTOR: Yes, Judge, thank you. One  
15 redirect question, if I could.

16 REDIRECT EXAMINATION

17 BY MR. PROCTOR:

18 Q. You were asked, Ms. Martinez, with respect to  
19 the info sheet being requested of ETCs. And you  
20 referenced the one that was required of TracFone?

21 A. Correct.

22 Q. Other than TracFone, at the present time are  
23 there any other wireless ETCs operating in the State  
24 of Utah?

25 A. Not that I'm aware of.

1 Q. And so you're not asking for anything  
2 different of Virgin Mobile that you would not ask of  
3 any prepaid wireless?

4 A. Correct. In fact, we -- our position would  
5 be to request the same of all ETC wireless providers.

6 MR. PROCTOR: Thank you very much,  
7 Ms. Martinez.

8 HEARING OFFICER: Thank you Ms. Martinez.  
9 You're excused.

10 Mr. Mecham?

11 MR. MECHAM: Thank you. And not that it's  
12 any of my business, but was Ms. Martinez's  
13 testimony --

14 HEARING OFFICER: Received?

15 MR. MECHAM: -- received?

16 HEARING OFFICER: I believe it was. But if  
17 we didn't do that, we -- it is received in evidence.

18 And just to be absolutely clear, Exhibits 1  
19 through 7 have been received. I think it was. My  
20 notes indicate it was. Thank you.

21 (Exhibit Nos. 1 through 7 were received.)

22 MR. MECHAM: I just missed it.

23 HEARING OFFICER: We want to make sure that  
24 happens.

25 Mr. Meredith, please.

1 (Mr. Meredith was sworn.)

2 HEARING OFFICER: Mr. Mecham?

3 MR. MECHAM: Thank you.

4 DOUGLAS D. MEREDITH,

5 called as a witness, having been duly sworn,

6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MECHAM:

9 Q. Mr. Meredith, could you state your name and  
10 business address for the record, please?

11 A. Yes. My full name is Douglas Duncan  
12 Meredith. My business address is 547 South Oakview  
13 Lane in Bountiful, Utah.

14 Q. And for whom are you appearing today?

15 A. I appear on behalf of the Utah Rural Telecom  
16 Association, also known as URTA.

17 Q. And did you prepare prefiled direct  
18 testimony, consisting of eight pages in the form of  
19 questions and answers?

20 A. Yes, I did.

21 Q. And if I were to ask you those same questions  
22 today as you sit here under oath would your answers be  
23 the same?

24 A. This testimony was prepared in November 2010,  
25 and in the passage of time there are three areas that

1 require some supplemental follow on.

2 Q. With respect to that that was prefiled, do  
3 you have any corrections in it?

4 A. No.

5 Q. Okay. So you have some supplemental -- this  
6 was filed, I believe, in November of last year. You  
7 have some supplemental areas, things that have  
8 transpired between November and now, and a summary of  
9 your testimony?

10 A. Yes, I do.

11 Q. Would you go forward?

12 A. Yes. First of all I would like to address,  
13 your Honor, the three areas of supplemental  
14 information that may give you some guidance regarding  
15 this matter before you.

16 On page 6, line 124 of the testimony there's  
17 a question identifying: "Why are you making a  
18 distinction for rural areas?" And there is a  
19 discussion about the requirements in Section 214(e)(2)  
20 of the Act.

21 Subsequent to the filing of the testimony the  
22 FCC has released a Notice of Proposed Rulemaking in a  
23 matter regarding universal service. And with regards  
24 to the requirements for voice services, the FCC is  
25 giving guidance -- or is recommending that an ETC be

1 required to provide service throughout the entire  
2 service area of the under -- of an underlying carrier  
3 or of the designated area.

4 This comes into play because there's a  
5 specific requirement in Section 214, subpart (e)(5),  
6 that requires that the service area for designation of  
7 an ETC be identical to the study area of a rural  
8 carrier, unless the FCC and the state commission make  
9 a determination otherwise based upon guidance from the  
10 Joint Board -- the Federal-State Joint Board on  
11 Universal Service.

12 The guidance that you receive from the Notice  
13 of Proposed Rulemaking in paragraph 98 suggests that  
14 the FCC would not be giving that guidance or that --  
15 making that determination in 2011. And so I believe  
16 the distinction is very critical now -- even more,  
17 more importantly critical for your, for your  
18 determination in this matter on page 6.

19 Turning to the second item, on page 7. On  
20 line 145 through 147 we have an identification of how  
21 much Lifeline's support has grown from 2009 to 2010.  
22 This is based upon a Federal-State Joint Board  
23 determination. Specifically they identify 1 billion  
24 in 2009 to a projected 1.4 billion in 2010.

25 In fact the projection was, indeed, met in

1 2010. And in 2011 the projection for Lifeline  
2 support -- or low-income support Lifeline -- in the  
3 Lifeline prog -- in the -- I'm sorry. Lifeline  
4 support in the low-income program is expected to  
5 exceed \$1.4 billion based upon 2011 projections.

6 The third supplement deals with the question  
7 starting on page -- on line 148, page 7. In this  
8 particular situation the joint -- Federal-State Joint  
9 Board has expressed some misgivings about the Lifeline  
10 program with regards to the concern or the burden that  
11 prepaid Lifeline service would have on universal  
12 service obligations nationally.

13 With regards to this, a recent decision,  
14 February 25, 2011, the FCC issued an order -- a  
15 memorandum opinion and order in the matter of Partner  
16 Communications Cooperative, where in that particular  
17 order the FCC gives guidance that I believe is  
18 applicable and should be noted.

19 That the Partner Communications Cooperative  
20 wanted to receive additional support. And they  
21 actually sought a forbearance from particular rules  
22 related to a high-cost Universal Service Program. Not  
23 the low-income program.

24 So the cor -- it's a corollary, not a direct,  
25 not a direct determination by the FCC. But the

1 guidance that the FCC gives in this particular order  
2 pertains to the public interest.

3 And in this particular order the FCC made a  
4 determination that it was not in the public interest  
5 to expand universal service for one carrier, because  
6 it would diminish the support received by other  
7 carriers or increase the contribution requirements by  
8 contributors to the overall Universal Service Fund.

9 The corollary is very direct. The  
10 federal -- the FCC is seeking to cap total universal  
11 service support at 2010 levels for all Universal  
12 Service Programs.

13 As Lifeline support increases there is a  
14 decrease, or will be a decrease in receipt from  
15 other -- by other carriers throughout the, throughout  
16 the nation. And there was also a possibility, if that  
17 doesn't happen, that the contribution factor would  
18 occur.

19 In paragraph 12 of that particular order that  
20 I referenced the FCC gives guidance that that is not  
21 in the public interest. And it's essentially stepping  
22 back, if I might characterize it, as a -- before they  
23 thought that incremental designations for ETC were  
24 fine and in the public interest.

25 Now they believe -- or I see this particular

1 decision as a step backward. Recognizing that you  
2 can, indeed, die from a death from a thousand cuts.  
3 And so *de minimis* increases in universal service to a  
4 particular carrier, the FCC's judgment in February  
5 last month was that it was not in the public interest  
6 to grant that.

7 I believe those three areas of guidance from  
8 the FCC might be helpful to you, your Honor.

9 With regards to the summary, just briefly.  
10 Obviously there are some key threshold determinations  
11 that your Honor has to make, the Commission has to  
12 make, in this particular proceeding. There's a  
13 requirement of a public interest test, as we have  
14 identified in Section 214(e)(2.) There's the  
15 requirement of what the exact service area is for  
16 rural areas of the state in Section 214(e)(5.)

17 And in addition to that there are public  
18 interest requirements for contributions. Whether  
19 the -- all of the obligations, the applicable taxes  
20 and fees that are applied to traditional providers of  
21 Lifeline service should apply to prepaid wireless  
22 service.

23 In total, all of those determinations -- or  
24 those items should be met -- or should be examined to  
25 see if they're met for a particular wireless carrier

1 that's offering prepaid service.

2 Prepaid wireless service is unique. It's a  
3 fairly new item nationally. The -- it's a very  
4 interesting model, because Sprint is not in the -- is  
5 not a nonprofit. It's in the business for making  
6 money.

7 And it believes that giving away a certain  
8 portion of minutes to low-income customers and  
9 receiving a subsidy therefrom is in their financial  
10 interest. Either by providing the service based upon  
11 the subsidy that they receive, or by using that  
12 subsidy -- using that initial service as a loss leader  
13 and getting low-income customers to buy additional  
14 services and offerings that they make.

15 So all of those need to be considered when  
16 making the public interest determination. Thank you.

17 Q. Does that conclude your summary and  
18 supplemental testimony?

19 A. Yes.

20 Q. Thank you.

21 MR. MECHAM: I would move the admission of  
22 Mr. Meredith's testimony, which is sponsored by Utah  
23 Rural Telecom Association and should be marked as  
24 Exhibit 8 in this proceeding.

25 HEARING OFFICER: It's received in evidence.

1 MR. MECHAM: Thank you.

2 (Exhibit No. 8 was received.)

3 MR. MECHAM: Now, in his supplemental  
4 testimony he referred to a rather lengthy Notice of  
5 Proposed Rulemaking.

6 HEARING OFFICER: Seven hundred and some  
7 pages, I think.

8 THE WITNESS: Yeah.

9 MR. MECHAM: Well, mine printed out I think  
10 289. Two hundred and sixty-nine.

11 HEARING OFFICER: Okay.

12 MR. MECHAM: But he only referred to  
13 paragraph 98 in that particular Notice of Proposed  
14 Rulemaking. And he also referred to an order  
15 issued -- or released February 25th in Docket WC  
16 No. 05-337, also numbered FCC 11-26.

17 I have copies of the order. I only have one  
18 copy of this. I don't -- given the fact that he used  
19 them I would ask that you take administrative notice  
20 of them.

21 HEARING OFFICER: Is there an objection to  
22 that?

23 MR. PROCTOR: Well, it's not an objection so  
24 much as a matter of just practically. I know that the  
25 rulemaking is 700-and-something pages. And --

1 HEARING OFFICER: At least that's how it  
2 looked on my computer screen as I examined it.

3 MR. PROCTOR: Yeah. And I don't know that  
4 we're sophisticated enough to be able to create a  
5 record for appeal that includes electronic documents  
6 and not some paper backup.

7 MR. MECHAM: Well --

8 MR. PROCTOR: I'm wondering if you'd submit  
9 that, and then -- but I don't want 700 pages of paper.

10 MR. MECHAM: I really do think it's a mere  
11 269 pages. But I'm happy to submit it. Heaven knows  
12 I don't need it. But we really only referred to  
13 paragraph 98 in it, so I would --

14 HEARING OFFICER: Right. The Commission will  
15 take administrative notice of it.

16 Let me also note, Mr. Mecham, that my  
17 inclination is to offer you the opportunity to brief  
18 this matter. And it would be helpful to the  
19 Commission if in your brief you would cite the both of  
20 these, and present them and whatever argument you  
21 think should apply to them.

22 And that would be another way for the  
23 Commission to consider that.

24 MR. MECHAM: Right. And I'd be happy to do  
25 that. And I'd also be happy to supply the court

1 reporter with a copy of each.

2 HEARING OFFICER: That's fine. We'll accept  
3 those.

4 MR. MECHAM: Okay.

5 HEARING OFFICER: Appreciate you doing it.

6 (Pause.)

7 MR. MECHAM: Mr. Meredith is available for  
8 cross examination.

9 HEARING OFFICER: Thank you.

10 Ms. Schmid?

11 MS. SCHMID: No questions.

12 HEARING OFFICER: Mr. Proctor?

13 MR. PROCTOR: Yes, I do. And it's based  
14 largely on the supplemental testimony. I received a  
15 copy at least of the documents yesterday, I believe.  
16 Is that correct, Mr. Mecham?

17 MR. MECHAM: It is.

18 MR. PROCTOR: So I do have a couple with  
19 respect to his supplemental testimony. So I, I  
20 apologize for announcing earlier that I had none.

21 HEARING OFFICER: No, that's quite all right.

22 CROSS EXAMINATION

23 BY MR. PROCTOR:

24 Q. Mr. Meredith, I want to bring your concerns  
25 about prepaid wireless and the subsidy or loss leader

1 character of it to a granular level of members of the  
2 URTA. Now, does Virgin Mobile's application for this  
3 area in which it will provide prepaid wireless  
4 Lifeline service overlap any of the service  
5 territories for the ILECs?

6 A. Based upon the information I have reviewed,  
7 it overlaps certain exchanges of the URTA members.

8 Q. Can you give me an example of which exchange  
9 would be overlapped by Virgin Mobile's wireless  
10 Lifeline?

11 A. Yes. If Sprint offers service in Castle Dale  
12 exchange, which is in Emery County, that is an  
13 exchange that Emery Telephone Cooperative serves. But  
14 Emery also serves more than just the Castle Dale  
15 exchange.

16 Q. Can you tell me how many Lifeline customers  
17 the Emery Telephone Cooperative is serving in Castle  
18 Dale, Utah?

19 A. No, I, I do not have that information here.

20 Q. Can you tell me how many Lifeline customers  
21 Emery Telephone Cooperative has throughout its service  
22 territory?

23 A. No, I do not have that information.

24 Q. Can you tell me how many Lifeline customers  
25 are being served by all of the members of URTA?

1           A.    No, I do not have that information.  But I do  
2 know -- I believe that information is filed at the  
3 Commission level.  So the Commission certainly could  
4 look at that.  Look at that information.

5           Q.    But as we sit here today, then, is URTA's  
6 concern that a low-income customer may get a wireless  
7 Lifeline benefit in Castle Dale, Utah and URTA doesn't  
8 want that to happen?

9           A.    No.  My testimony is that there are certain  
10 thresholds that need to be met.  There needs to be a  
11 public interest standard established and evaluated as  
12 to whether a prepaid wireless service in a rural area  
13 of Utah actually meets that standard.

14                   There also needs to be a determination  
15 whether the carrier needs to provide service  
16 throughout the service area.  The NPRM goes so far to  
17 say that the FCC is seeking to implement a rule that  
18 would require an ETC to go to other providers of voice  
19 service so that they can provide service throughout  
20 the entire area.

21                   And they even give the example of using  
22 satellite providers as a partner to provide service  
23 throughout the entire service area.  The critical  
24 issue -- so those two, those two standards or those  
25 two thresholds need to be met.

1           After that, the -- my testimony specifically  
2 states that they should be required to pay all of the  
3 applic -- all of the fees and the surcharges that  
4 apply to regular telephone -- wireline telephone  
5 carriers when they provide voice service.

6           And at this point, that is not the -- that is  
7 not being done. Typical examples of that would be  
8 Poison Control, that has a particular statute asso --  
9 a particular act or a bill up at the -- up on the Hill  
10 that might address that.

11           But there's also the telephone for the  
12 hearing impaired surcharge that is not being evaluated  
13 in that.

14           Q. Well I'll ask you, Mr. Meredith. Does the  
15 hearing impaired telecommunications system,  
16 represented as relay, does that apply to a wireless  
17 handset?

18           A. Does it apply, meaning --

19           Q. Does it work?

20           A. -- does it work? I don't know. But that's  
21 not a material question, because the question is this:  
22 If a Lifeline customer or a customer gets a Lifeline  
23 service from a prepaid wireless, then the contribution  
24 that would have gone to the telephone relay service is  
25 not going to the telephone relay service. And the

1 telephone relay service budget will be affected.

2 Q. Does Emery Telephone Cooperative provide  
3 relay service within its service territory?

4 A. I do not know. It provides whatever is  
5 required and whatever is -- whatever services they  
6 offer. I have not looked at that.

7 Q. Does Emery Telephone Cooperative receive any  
8 subsidy from the Universal Service Fund, either  
9 federal or state?

10 A. Yes, they do.

11 Q. Which ones do they receive?

12 A. They receive high-cost universal service  
13 support from the federal Universal Service Programs.

14 Q. Is Emery Telephone Cooperative an ETC?

15 A. Yes, it is.

16 Q. But you do not know whether they actually  
17 provide a Lifeline service?

18 A. I have not -- I did not check to see that. I  
19 would, I would be very surprised if they did not also  
20 receive Lifeline low-income support from the federal  
21 program. But subject to check, I, I cannot  
22 affirmatively state that now.

23 MR. PROCTOR: Thank you Mr. Meredith.

24 Nothing further.

25 MS. BERTELSEN: May I?

1 HEARING OFFICER: Pardon me just a moment.

2 Ms. Bertelsen?

3 MS. BERTELSEN: Thank you, your Honor.

4 CROSS EXAMINATION

5 BY MS. BERTELSEN:

6 Q. Mr. Meredith, good morning.

7 A. Good morning.

8 Q. In your direct testimony, on page 7.

9 Beginning on line 138 you discuss the Federal and  
10 State Joint Board and their recommended decision that  
11 was released November 4, 2010, in CC Docket No. 96-45.

12 And you make an inference about the Board's statement.

13 And you state:

14 "That the Joint Board members have  
15 misgivings about the free Lifeline  
16 program that Virgin Mobile, TracFone,  
17 and others are offering."

18 My question to you is, are you aware that  
19 Commissioner Landis of Indiana is a member of the  
20 Joint -- the Federal and State Joint Board?

21 A. Yes, I am.

22 Q. And are you aware that Commissioner Landis  
23 conducted questioning in Virgin Mobile's ETC  
24 proceeding in Indiana?

25 A. I'm not aware of that, but I wouldn't be

1 surprised.

2 Q. And the Indiana Public Service Commission  
3 approved Virgin Mobile's application in October 2010,  
4 just prior to this November 4th recommended decision.

5 And then also, are you aware that the FCC  
6 designated Virgin Mobile as an ETC in five additional  
7 states in December 2010, which is after the -- this  
8 Joint Board recommended decision?

9 A. Yes, I am.

10 Q. Thank you. And then turning to page 5,  
11 beginning on line 109. You discuss the TracFone  
12 proceeding. And the fact that the Commission  
13 initially determined that they did not have to pay  
14 into the State Universal Service Fund. And that URTA  
15 was seeking reconsideration.

16 And as you know, URTA's petition for  
17 reconsideration was granted. And is it your  
18 understanding that the reconsideration is limited  
19 primarily to the issue of TracFone's obligation to pay  
20 into the state USF Fund?

21 A. I don't know about the limitation. I know  
22 they're speaking specifically to the State Universal  
23 Service Fund. I'm not -- I can't recall whether it  
24 expands to other applicable surcharges.

25 Q. Well, the Commission declined to make the

1 payment of 911 tax and other public service program  
2 surcharges a condition to the ETC designation.

3 MS. BERTELSEN: Thank you. That's all I  
4 have.

5 HEARING OFFICER: Redirect, Mr. Mecham?

6 MR. MECHAM: No redirect. Thank you.

7 HEARING OFFICER: Thank you very much,  
8 Mr. Meredith.

9 THE WITNESS: Thank you.

10 (A discussion was held off the record.)

11 (A recess was taken from 10:58 to 11:13 a.m.)

12 HEARING OFFICER: Ms. Divelbliss, before we  
13 broke, I --

14 Can you hear me? Thank you.

15 Ms. Divelbliss, before we broke for a few  
16 minutes I mentioned a couple of questions that I would  
17 have for you after the break. I'd like to invite you  
18 to address those now. I apologize that this is a  
19 little unusual. You're still under oath.

20 And I'll allow limited examination on what I  
21 ask if counsel feel a need for that, with  
22 Ms. Bertelsen going last among those who would have  
23 questions.

24 The first subject area relates to your  
25 testimony about the Company's practice in at least one

1 other jurisdiction of providing a customer list to the  
2 regulator, or some entity with verification  
3 responsibilities, so that comparisons can be made in  
4 search of customers that might be receiving more than  
5 one Lifeline-type service.

6 And so I'd -- if you wouldn't mind, I'd like  
7 you to elaborate on that and to indicate whether  
8 that's -- you were addressing specifically the setting  
9 of prepaid services. And if so, how is the customer  
10 list developed and what kind of information is on it.  
11 So a very complex, compound question, but it's really  
12 a subject area that I'm asking you to address.

13 MS. DIVELBLISS: Absolutely, your Honor. If  
14 I could actually refer to Exhibit 1 of my supplemental  
15 testimony. I don't know if you have it in front of  
16 you. It's a copy -- it's a draft copy of the customer  
17 application provided by Assurance Wireless by Virgin  
18 Mobile.

19 HEARING OFFICER: Uh-huh.

20 MS. DIVELBLISS: I'd like to just walk you  
21 through it very quickly to just, you know, really  
22 apprise the Commission of the type of information that  
23 Virgin Mobile collects in connection with its Lifeline  
24 applications. And really to attempt to address any  
25 misconceptions or misgivings about prepaid wireless,

1 you know, and/or prepaid wireless Lifeline.

2 The application -- let me step back and just  
3 mention that the application, in addition to Virgin  
4 Mobile's vast array of Lifeline advertising materials,  
5 have been carefully reviewed by a number of Offices of  
6 Consumer Services in a number of states. Washington,  
7 Indiana, Mississippi, all come to mind immediately.

8 So, you know, we receive signoff and in some  
9 cases input on the application. So Section A,  
10 Personal Information, collects the customer's name,  
11 address, as the absolute first piece of information.  
12 The reason we do that is to ensure that we are  
13 strictly adhering to the one Lifeline discount per  
14 household requirement.

15 In order to adhere to that requirement we  
16 obviously need to collect address information. And so  
17 in the context of our Lifeline program the customer  
18 must provide that information. That information, the  
19 address itself is verified against U.S. Postal Service  
20 address software.

21 So Solix, who -- a company that provides some  
22 third-party administrative services for the Company  
23 looks at every customer address to ensure it is, in  
24 fact, a valid U.S. postal address. Solix then takes  
25 the additional step of ensuring that that address is

1 not currently in use by a Virgin Mobile customer. And  
2 all that is public information, so I'll put that out  
3 there.

4 So that's the address portion. Section B,  
5 Program-Based Eligibility. For each state we tailor  
6 the application. You'll see at the top it says "State  
7 Name," in brackets. So the application gets tailored  
8 to list only the programs that would render a resident  
9 eligible in that particular state.

10 For this particular application it refers to  
11 providing a copy of program identification. So there  
12 are some states that in fact under their rules,  
13 regulations, or otherwise require documentation to be  
14 submitted.

15 We are set up to collect that documentation  
16 and to review it to ensure the customer's eligibility  
17 based on program participation.

18 Section C goes to income-based eligibility.  
19 This is a state that I happen to know looks to  
20 135 percent of the federal poverty guidelines. The  
21 customer is asked to indicate, you know, that they  
22 fall within the appropriate bands, and then to attach  
23 proof of income. And we provide very clearly to the  
24 customer the type of documentation that would suffice.

25 Section D, the signature, serves as the

1 certification. The self-certification we've been  
2 discussing. Now, this would be an example of a state  
3 that doesn't necessarily accept self-certification for  
4 purposes of program eligibility.

5 They do accept self-certification for, for  
6 example, the customer's certification that they have  
7 only one -- this is the last paragraph of that  
8 certification:

9 "I understand that Lifeline is only  
10 available for one landline or wireless  
11 phone per household."

12 The customer is self-certifying to that under  
13 penalty of perjury. You know, above that in the third  
14 paragraph the customer commits to verifying continuing  
15 eligibility as required. And the customer also  
16 commits that if they're no longer eligible, they'll  
17 contact the Company.

18 And so there are these various, you know,  
19 requirements and certifications the customer must sign  
20 under penalty of perjury and attest to. So that's  
21 really a copy of the application.

22 So going back to your specific question, you  
23 know, how do we create the list. Well, again, we  
24 absolutely collect address information. We'd be  
25 required to do so. It's just, it's fundamental to

1 providing Lifeline and ensuring that only one discount  
2 is being provided per household by the Company.

3 We create a list by simply generating an  
4 Excel spreadsheet for the customers in that particular  
5 state. And the spreadsheet would list, you know -- I  
6 think Mississippi was the first state to require this,  
7 and they had a very specific list of information.

8 Pretty basic information because obviously  
9 you can get into, you know, confidential customer  
10 information, CPNI, information of that sort.

11 HEARING OFFICER: Uh-huh.

12 MS. DIVELBLISS: So names, address. And  
13 frankly that may suffice for running the type of  
14 match, because it's really that address that should be  
15 focused on in looking for the match. You know, making  
16 sure that there's only one discount for that  
17 particular address. So that's a really long-winded  
18 response to your question.

19 HEARING OFFICER: Any information about  
20 number of adults in the household or anything like  
21 that that's on these lists in other jurisdictions, as  
22 far as you are aware?

23 MS. DIVELBLISS: Number of adults, meaning --  
24 are you getting at whether or not more than one adult  
25 in a household could receive a Lifeline discount?

1 HEARING OFFICER: Well, whether they could or  
2 not, just whether the information allows the verifier  
3 to determine what the risk is of more than one adult  
4 receiving service, Lifeline service in that setting.  
5 So I'm just, I'm just curious as to --

6 MS. DIVELBLISS: So --

7 HEARING OFFICER: -- whether, whether you  
8 know that or.

9 MS. DIVELBLISS: That's not information that  
10 we request specifically. I will say that, again, for  
11 Virgin Mobile's Lifeline program specifically, we will  
12 not issue more than one account to an address.

13 HEARING OFFICER: Uh-huh.

14 MS. DIVELBLISS: So if there were ten adults,  
15 you know, living in a group housing situation, we're  
16 constrained by Federal Rules to provide only one  
17 discount. So that's the, that's really the best I can  
18 answer your question.

19 HEARING OFFICER: Okay.

20 MS. DIVELBLISS: We otherwise don't inquire  
21 as to the makeup of a particular household.

22 HEARING OFFICER: Thank you. And then  
23 regarding the fees, whichever ones Virgin Mobile  
24 believes apply. Are those just simply priced into  
25 the, into the card, or are they recovered on some

1 separate basis? Some discrete basis?

2 MS. DIVELBLISS: Virgin Mobile pays those  
3 fees out of its general revenues. With the exception  
4 of states that have enacted point-of-sale statutes  
5 that would permit a retailer to collect those fees at  
6 the point of sale.

7 Whether or not -- you asked whether they're  
8 priced into the service. Prepaid wireless is  
9 extremely competitive. And so they certainly, to my  
10 knowledge, are not explicitly priced in. For example,  
11 we wouldn't add an additional \$0.07 to a Utah  
12 customer -- Utah customer's pricing based on a  
13 particular fee in the State of Utah.

14 I mean, we obviously are a national service,  
15 and so our pricing is across the board.

16 HEARING OFFICER: Uh-huh.

17 MS. DIVELBLISS: So they're not explicitly  
18 priced in in that manner.

19 HEARING OFFICER: Thank you. Any questions  
20 based on mine?

21 MR. MECHAM: No.

22 MS. SCHMID: No.

23 MS. BERTELSEN: Yes.

24 HEARING OFFICER: Let me just determine, is  
25 there none from other parties?

1           Okay Ms. Bertelsen, then you may conduct some  
2 limited redirect.

3           MS. BERTELSEN: Just a clarification.

4           HEARING OFFICER: Sure.

5                         ELAINE DIVELBLISS,

6                         called as a witness,

7                         having previously been duly sworn,

8                         was examined and testified as follows:

9                                 FURTHER REDIRECT EXAMINATION

10          BY MS. BERTELSEN:

11           Q.    Ms. Divelbliss, you mentioned CPNI. For the  
12 record, will you -- for those who don't know what CPNI  
13 is?

14           A.    I don't know if I --

15           Q.    Customer proprietary?

16           A.    Proprietary --

17           Q.    Network information?

18           A.    Customer proprietary network information.

19           It's information that the telecommunications carrier  
20 associates with the customer specifically. And that's  
21 information that, under federal statute, we're not  
22 permitted to provide outside of the Company.

23           Q.    So there are privacy restrictions  
24 requirements. And then everything you've said,  
25 though, just to confirm, is subject to privacy

1 requirements, obviously?

2 A. Right. To the extent we would provide, for  
3 example, a customer list to a particular state that  
4 was able to use it. We're not going to provide it  
5 presumably just so the state can review it at will.

6 But if it were to be used for the purpose  
7 that, you know, we've discussed, it would be subject  
8 to whatever confidentiality protections could be put  
9 in place.

10 HEARING OFFICER: Thank you.

11 I believe we've received all of the evidence  
12 that the parties intend to present. The final subject  
13 for us to address today, as far as I'm aware, is the  
14 briefing schedule.

15 I propose that what I would like to do is  
16 provide the parties an opportunity, if they choose to,  
17 to file a brief of ten pages or less by April the 7th,  
18 which is a Thursday. With a reply brief of five pages  
19 or less, if a party chooses to, due on April 14th.

20 Any questions about that or objections to  
21 that process?

22 Are there any other matters we need to take  
23 up before we adjourn? Thank you very much for your  
24 participation today. We're off the record.

25 (The hearing was concluded at 11:25 a.m.)

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C E R T I F I C A T E

STATE OF UTAH                    )  
  ) ss.  
COUNTY OF SALT LAKE        )

This is to certify that the foregoing proceedings were taken before me, KELLY L. WILBURN, a Certified Shorthand Reporter and Registered Professional Reporter in and for the State of Utah.

That the proceedings were reported by me in stenotype and thereafter caused by me to be transcribed into typewriting. And that a full, true, and correct transcription of said proceedings so taken and transcribed is set forth in the foregoing pages, numbered 1 through 92, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

SIGNED ON THIS 20th DAY OF March, 2011.

Kelly L. Wilburn, CSR, RPR  
Utah CSR No. 109582-7801

<b>\$</b>	70:5, 70:14	<b>700-and-something</b>	<b>Action</b> [3] - 58:22,	<b>advertise</b> [1] - 35:23
<b>\$0.07</b> [1] - 90:11 <b>\$0.10</b> [2] - 13:13, 13:14 <b>\$20</b> [1] - 13:8	<b>21</b> [1] - 23:24 <b>214</b> [1] - 69:5 <b>214(e)(1)</b> [1] - 36:13 <b>214(e)(2)</b> [4] - 25:14, 54:22, 68:19, 72:14 <b>214(e)(5)</b> [2] - 55:16, 72:16	[1] - 74:25 <b>746-341-3</b> [3] - 16:25, 48:7, 49:7 <b>750</b> [1] - 13:9 <b>764</b> [1] - 58:22 <b>7th</b> [1] - 92:17	60:15, 60:21 <b>actions</b> [1] - 44:2 <b>activities</b> [1] - 32:3 <b>add</b> [5] - 45:13, 47:11, 48:21, 49:1, 90:11	<b>advertising</b> [4] - 62:11, 62:13, 63:15, 85:4 <b>advocacy</b> [1] - 60:18 <b>advocate</b> [1] - 59:1 <b>advocating</b> [1] - 64:14
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